



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/160017

PRELIMINARY RECITALS

Pursuant to a petition filed August 18, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on September 18, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's request to backdate MA eligibility to May, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Brandon O'Bryon
N95 W16975 Falls Pkwy Ste 3
Menomonee Falls, WI 53051

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Nicklaus Kusch

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner submitted an application for healthcare benefits to the agency on June 11, 2014. She requested a backdate of eligibility to May, 2014.

3. As of May 31, 2014, the Petitioner had \$2,500 in a bank account that she intended to use for an irrevocable burial trust.
4. A meeting was scheduled for May 28, 2014 between the Petitioner and the funeral home for the purpose of executing an irrevocable burial trust contract. Due to a medical issue, the Petitioner was unable to attend the meeting and execute the trust contract.
5. On June 4, 2014, the Petitioner executed an Irrevocable Funeral Service and Merchandise Agreement Funded with a Trust.
6. On June 27, 2014, the agency issued a Notice of Decision informing the Petitioner that her application for benefits was approved effective June 1, 2014. The notice also informed the Petitioner of the right to a hearing by filing an appeal by August 12, 2014.
7. On July 10, 2014, the agency issued a notice to the Petitioner informing her that she was approved for benefits effective June 1, 2014 and that her request for backdating to May, 2014 was denied due to being over the \$2000 asset limit.
8. On August 18, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

An applicant for Institutional/Elderly-Blind-Disabled MA has to satisfy nonfinancial and financial tests to be found eligible. The petitioner has passed the nonfinancial tests. The agency has concluded that she did not pass the asset test in May 2014. A single person cannot have nonexempt assets exceeding \$2,000. Wis. Stat. §49.47(4)(b)3g; Medicaid Eligibility Handbook (MEH), § 39.4.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

There is no dispute in this case that the Petitioner had \$2,500 in a bank checking account on May 31, 2014. The Petitioner has submitted an affidavit stating that she had identified these funds to be used for an irrevocable burial trust and that there was a meeting scheduled for execution of the trust fund on May 28, 2014. Due to unforeseen medical circumstances, the Petitioner was unable to execute the contract until June 4, 2014.

In determining eligibility, the agency is to count all available assets including funds in bank accounts and burial funds. Only burial funds that are made irrevocable are considered to be exempt in counting an individual's assets.

With regard to asset availability, the policy states:

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Consider an asset as unavailable if:

1. The member lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

or

When the owner or owner's representative documents that the asset will not be available for 30 days or more.

Use the criteria above to determine whether an asset was available in a backdate month unless an asset is deemed unavailable in the month of application because it will not be available for 30 or more days (considered unavailable in any or all backdate months).

MEH, § 16.2.1.

Specifically, with regard to burial trusts, the policy states:

Exempt all burial trusts made in Wisconsin that are irrevocable by Wisconsin law, as noted in the trust agreement.

MEH, § 16.5.1.

The petitioner did not transfer his assets in time, so the case closure effective July 1, 2014, was correct.

The funds in the Petitioner's checking account were available assets until they were made unavailable on June 4, 2014 when a check was written and the irrevocable burial trust was executed. I recognize that the Petitioner intended to transfer the funds earlier and was unable to do so for reasons beyond her control. However, I do not have equitable authority and must find in accordance with the regulations and policies. Based on the fact that the assets in the checking account remained available until placed in the trust on June 4, 2014, I must conclude that the agency properly denied the request to backdate MA eligibility for May, 2014 based on Petitioner being over the asset limit.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's backdate request for May, 2014.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

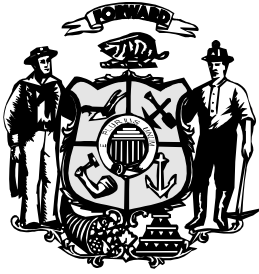
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of October, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 21, 2014.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney Brandon O'Bryon